

EXHIBIT G

PRESENT (Continued):

Choate Hall & Stewart LLP
(by Robert S. Frank, Jr., Esq.,
Sarah Chapin Columbia, Esq. and
Christopher J. McKenna, Esq.)
Two International Place, Boston, MA 02110,
for the Defendants.

ALSO PRESENT: Richard Goldhor, Ph.D.
William Byrne, Ph.D. (via telephone)

(Anne H. Bohan, Registered Diplomate Reporter)

* * * * *

I N D E X

Testimony of:	<u>DIRECT</u>	<u>CROSS</u>
Richard Goldhor, Ph.D.		
(By Mr. Bromberg)	5	
(By Mr. Frank)		12

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1 P R O C E E D I N G S

2 (Present in the room are all counsel
3 together with Dr. Goldhor and Dr. Ney)

4 MR. BROMBERG: Good morning, Professor Ney.

09:47:03 5 We have a procedural matter to deal with before we
6 get started with you, and we thought we ought to
7 excuse you for five or ten minutes while we dealt
8 with that issue, and then we will bring you back in
9 the room to conduct the proceedings.

09:47:16 10 DR. NEY: No problem.

11 (Dr. Ney left the room)

12 RICHARD GOLDHOR, Ph.D., Sworn

13 DIRECT EXAMINATION

14 BY MR. BROMBERG:

09:48:21 15 Q. Would you state your name for the record,
16 sir.

17 A. Richard Goldhor.

18 Q. How do you spell your last name?

19 A. G-o-l-d-h-o-r.

09:48:27 20 Q. Are you a doctor?

21 A. I am a doctor.

22 Q. You have a Ph.D., correct?

23 A. I do.

24 Q. Dr. Goldhor, I'm going to hand you a

1 three-page document that is captioned "Declaration
2 of Richard Goldhor" and ask you if you would look at
3 that, sir.

4 A. (Witness reviews document) Okay.

09:48:51 5 Q. Is that your signature on the third page?

6 A. Yes, it is.

7 Q. When did you sign that?

8 A. I signed that this morning.

9 Q. Is everything in that document true and
09:49:00 10 correct, to the best of your knowledge?

11 A. Yes, it is.

12 Q. May I have it back for a moment, please.

13 A. Sure.

14 MR. BROMBERG: Let me ask the reporter to
09:49:09 15 mark that.

16 (Document marked as Goldhor

17 Exhibit 1 for identification)

18 Q. Dr. Goldhor, could you look at Paragraph 4
19 of your declaration which reads: "In the late
09:49:47 20 afternoon of May 3rd, I received from Mr. Lawrence a
21 copy of VST's submissions to the Neutral Expert."

22 Do you see that, sir?

23 A. Yes.

24 Q. Who is Mr. Lawrence?

1 A. That's Brad Lawrence down at the end of the
2 table. He's the Designated Counsel for ScanSoft.

3 Q. Can you describe for us, please, what you
4 received on that day, to the best of your
09:50:10 5 recollection.

6 A. Yes. It was a box that had been delivered
7 by courier, and in the box there was a cover letter
8 from Mr. Lawrence, and there were four items in it,
9 four documents.

09:50:22 10 Q. Do you recall what those documents were?

11 A. I only looked at one of the --

12 MR. FRANK: No, that's not the question.
13 What were those items?

14 A. They were four printed items. I can't
09:50:38 15 comment on three of them, because I didn't look at
16 them, I didn't examine them. I did examine one
17 item, which was a three-ring binder that had a copy
18 of VST's response or arguments about a previous
19 brief from ScanSoft to Professor Ney.

09:51:14 20 Q. Can you describe, Dr. Goldhor, what you
21 looked at in that binder, sir.

22 A. Yes. The binder contained this set of
23 arguments and also a set of appendices. I actually
24 didn't have very much time, so I chose to just look

1 at that document of the four things in the box, and
2 I just read the main part, sort of skimmed through
3 the main part of this document. I did not examine
4 any of the appendices.

09:51:50 5 Q. In skimming through, do you recall what you
6 saw in that document, sir?

7 A. Yes. It was a comment on the three areas
8 of technology that we had identified in the original
9 brief, and it was VST's comments on each of those
09:52:12 10 arguments, which essentially were comments to the
11 effect of, We don't do the same thing that ScanSoft
12 does in these three areas, we do something
13 different. And there were also arguments, as I
14 recall, to the effect of, Even if we were to do
09:52:32 15 these, implement these same algorithms, that they're
16 not trade secrets.

17 Q. Do you recall, Dr. Goldhor, whether or not
18 that document that you reviewed had any excerpt of
19 VST source code in it?

09:52:53 20 A. I don't really have a clear memory other
21 than there was at least one place, I think one place
22 in which there was some source code. I don't
23 actually remember at this point what that was. It
24 was just something kind of in the line of the same

1 sort of arguments that I described. But I don't
2 recall the sort of point of the code.

3 Q. Now, have you told us everything about what
4 you did to look at any material that was in that
09:53:30 5 box?

6 A. Yes, that's correct. As I say, I just
7 skimmed through the main part of this one document
8 out of the four. I then took that document and
9 another folder with me to the meeting that we had
09:53:50 10 the next day, which would have been last Thursday,
11 and I took the other documents and I put them in a
12 locked storage area.

13 Q. Did you look at those -- at that document
14 -- well, strike that. At a certain point you
09:54:10 15 returned that document and the other materials to my
16 office, correct?

17 A. Yes, that's correct.

18 Q. When did you do that, sir?

19 A. That was on Friday afternoon. I received a
09:54:19 20 phone call -- several phone calls Friday morning
21 from your colleague saying not to look at it anymore
22 and to return it, and I packed it all up and drove
23 down to your office and returned it.

24 Q. Did you look at any of those documents,

1 other than what you've already described?

2 A. The only other thing that I looked at was
3 on Thursday, at your offices. One of the other four
4 documents was a slim folder that had basically, I
09:55:06 5 think, a summary. What I saw was a table that
6 summarized the CDs that had been given to Professor
7 Ney, sort of listed CDs 1 through 6, and a short
8 description in terms of really just of a root of a
9 file specification. And Brad and I looked at those.

09:55:35 10 Q. Now, your declaration says that you did
11 pick up a laptop at my office.

12 A. Yes, that's correct.

13 Q. When was that, sir?

14 A. That was Thursday afternoon.

09:55:49 15 Q. Can you tell us what you did with that
16 laptop from the time it came into your possession.

17 A. Yes. So, basically, at your office with
18 the Designated Counsel, we looked at the file
19 structure. Most of the discussion was focused
09:56:15 20 around that one table from the VST material that I
21 had gotten on Wednesday and sort of pointing out
22 where on the hard drive of the laptop the
23 corresponding material could be found. I did not
24 look at any source code from that laptop, either at

1 that time in your offices with Mr. Lawrence or later
2 when my conversation with Mr. Lawrence was
3 completed.

4 I left your offices, I returned out to
09:56:58 5 Bedford where my offices are, and I spent probably
6 about an hour looking and trying to understand what
7 my options were for doing a thorough examination of
8 the source code, and in the course of doing that I
9 looked at the system configuration. But, again, I
09:57:24 10 did not look at any source code, I did not attempt
11 to look at any source code.

12 Q. How about on Friday?

13 A. Friday morning I attended a funeral, and
14 when I got back to my offices -- oh, excuse me, let
09:57:39 15 me go back just a little bit. At the end of the day
16 on Thursday, I took the laptop and I locked it up in
17 a storage room that I had along with other documents
18 that I received on Wednesday. Then on Friday
19 morning I had a funeral, I was not in the office at
09:57:55 20 all until something like 12:15, 12:30. I sat down
21 at my desk, checked my phone messages, found the
22 phone messages from your colleagues, and packed
23 everything up in the trunk of my car and came down
24 to your offices.

1 MR. BROMBERG: Thank you, Dr. Goldhor.

2 CROSS EXAMINATION

3 BY MR. FRANK:

4 Q. Dr. Goldhor, I understand that you received
09:58:26 5 a call on May 2nd? Tuesday, May 2nd?

6 A. Um-hum.

7 Q. From whom did you receive that call?

8 A. That was from Lisa Fleming.

9 Q. What did Ms. Fleming say to you?

09:58:37 10 A. She said that -- the nearest that I can
11 recall, she basically said that a request to the
12 Court had been granted that would give me access to
13 the VST source code, that I would be receiving some
14 documents the following day, it would be sent out by
09:59:02 15 courier, and that I could now have access to this
16 laptop that VST had provided the Designated Counsel.
17 We talked about how I would get that.

18 We concluded that since I would be coming
19 down, there was already a meeting planned for me to
09:59:22 20 come down Thursday morning, that I would pick up the
21 laptop at that point. That was about it.

22 Q. Did she tell you what she wanted you -- or
23 did she ask you to do something with respect to the
24 materials that you would be receiving?

1 A. Not really. The only discussion along
2 those lines was my saying, "You understand I'm not
3 going to have a chance to look at the source code,
4 I'm not going to have any opinions about the source
09:59:50 5 code for the meeting with Professor Ney on Monday."
6 And she said, "Oh, yes, I understand. That's for
7 afterwards."

8 Q. Did she ask you -- before you said you
9 would not have opinions for Monday, did she ask you
10:00:03 10 to examine the source code?

11 A. No, sir, she didn't. That was just my
12 trying to make sure that her expectations weren't
13 different from mine.

14 Q. So you want to leave it that she told you
10:00:13 15 that you would be receiving the source code but that
16 she did not ask you to do anything with the source
17 code?

18 A. Yes, that's correct.

19 Q. She told you also that you would be
10:00:24 20 receiving briefing materials?

21 A. Yes, that's right.

22 Q. Did she tell you that there was any
23 restriction on your use of the briefing materials?

24 A. She didn't explicitly say, as far as I

1 recall. It was my understanding that all this was
2 highly confidential information and that I needed to
3 treat it with the same sort of respect and degree of
4 confidence that I was treating the ScanSoft
10:00:59 5 material.

6 Q. Did she ask you to review the materials
7 that would be sent to you?

8 A. No, sir. I think that that was sort of
9 understood as the long-term goal, but at this point
10:01:14 10 I know that I was focused, and I believe that she
11 was focused, on this meeting today with Professor
12 Ney. And it was my desire, and I made it clear that
13 she agreed and had the same expectation, that
14 working with the VST material was something that was
10:01:31 15 going to happen afterwards.

16 Q. What did she say? I'm not asking for your
17 understanding; I'm asking for what she said.

18 A. It's what I already told you, that this
19 court order had been granted and that this material
10:01:46 20 was coming.

21 Q. Now, I take it that on Wednesday, you
22 received a box containing four items plus a cover
23 letter?

24 A. Yes, that's correct.

1 Q. Do you have the cover letter? This is Mr.
2 Lawrence's cover letter?

3 A. Yes, that's right.

4 Q. What was the substance of what was said in
10:02:13 5 the cover letter?

6 A. It was mostly just, as I took it, kind of a
7 formal accounting for the record of what the
8 contents would be. And it focused my attention on
9 two of the documents rather than the other two. One
10:02:32 10 of the things that it said, this is probably the
11 thing to read first, was this VST argument that I
12 have already described.

13 MR. FRANK: Do we have the cover letter in
14 the room?

10:02:51 15 MR. LAWRENCE: Are we on the record?

16 MR. FRANK: Yes, we're on the record. And
17 the record should show I've turned to Mr. Lawrence
18 and asked him whether we have the cover letter in
19 the room.

10:02:58 20 MR. LAWRENCE: I do not.

21 MR. FRANK: Does Bromberg & Sunstein have
22 the cover letter in the room?

23 MS. FLEMING: I'm looking. We do not.

24 MR. FRANK: Are you prepared to provide us

1 with a copy of the cover letter?

2 MR. BROMBERG: Well, if we can come up with
3 a copy, we'll provide it to you.

4 MR. FRANK: Well, I suspect the copy
10:03:22 5 exists. Are you prepared to provide us with a copy,
6 assuming that it has not been completely erased from
7 the computer system?

8 MR. BROMBERG: Yes.

9 BY MR. FRANK:

10:03:36 10 Q. Now, on Wednesday, as I understand it, one
11 of the things that you looked at was a notebook that
12 had a number of attachments.

13 A. Yes, sir.

14 Q. I'm holding it up (exhibiting document).
10:03:53 15 Without asking you to review it in detail, is it
16 correct, it is Voice Signal's March 24, 2006
17 submission to the Neutral Expert? Are the materials
18 that I'm holding up the notebook that you received
19 on my representation?

10:04:11 20 A. It looks similar, yes.

21 Q. Is it correct that you read the discourse,
22 which consists of 18 pages and is at the beginning
23 of the notebook?

24 A. That sounds about right.

1 Q. And did not read the various -- anything at
2 all in any of the tabbed sections A through K?

3 A. Yes, that's correct.

4 Q. Now, the part that I've called "the
10:04:44 5 discourse," did you receive a redacted version of
6 that document or an unredacted version of that
7 document?

8 A. I believe it was unredacted.

9 Q. Is it correct that you read the entire
10:04:59 10 document?

11 A. I would say I skimmed through it.

12 Q. How long did you spend reading that
13 document?

14 A. Maybe 20 minutes.

10:05:10 15 Q. Did you observe in it lines of source code?

16 A. I'm a bit embarrassed by this. My memory
17 is that there was one chunk of source code.

18 Q. Did you read that source code?

19 A. I probably skimmed through it. I don't
10:05:30 20 remember treating it any differently from any of the
21 rest of the discourse, as you've described it.

22 Q. Did Mr. Lawrence or anyone else tell you
23 that you should not look at any of the materials
24 that were in the box that Mr. Lawrence sent to you?

1 A. No, they didn't.

2 Q. You said that you then went to Bromberg &
3 Sunstein on Thursday of last week?

4 A. Thursday, that's correct.

10:06:07 5 Q. And you said you took the notebook and you
6 said another folder.

7 A. Yes, a manila folder, which was sort of the
8 second of the four items in the box.

9 Q. That was Voice Signal's submission of April
10:06:26 10 10th containing what I would describe as a roadmap
11 through the source code that was provided to
12 Professor Ney, correct?

13 A. That description sounds compatible with the
14 one page that was all that I really focused on, and
10:06:47 15 I hadn't read any of that stuff at all until I got
16 to the meeting on Thursday. At the end of the
17 meeting on Thursday, as I said, Mr. Lawrence and I
18 examined one page, which contained a chart listing
19 six CDs and a short description of the contents of
10:07:07 20 each of those six CDs.

21 Q. Did you look at other charts?

22 A. No.

23 Q. Did you read the text of that submission?

24 A. The text of that chart I read, yes.

1 Q. But did you read the rest of the text?

2 A. No.

3 Q. Did you read the rest of the text at any
4 time?

10:07:26 5 A. No, sir, I didn't.

6 Q. How long were you -- who was present at
7 your Bromberg & Sunstein meeting on Thursday of last
8 week?

9 A. The attorneys that are here today.

10:07:45 10 Q. All four?

11 A. Plus Jay Sandvos, yes.

12 Q. So it would be Mr. Bromberg -- I beg your
13 pardon.

14 A. Excuse me. I may be incorrect about Erik
10:08:04 15 being present.

16 Q. Mr. Bromberg, Ms. Fleming, Mr. Lawrence and
17 Mr. Sandvos?

18 A. Yes.

19 Q. How long did that meeting last?

10:08:17 20 A. It lasted for probably four hours or so.

21 Q. So you spent four hours. In fairness, I
22 see some conversation on the other side of the
23 table. Are you confident that Mr. Bromberg was
24 there?

1 A. No. I'm sorry. We've had several meetings
2 and I may be mistaken about that. Let me start
3 again.

4 Ms. Fleming was there, Mr. Lawrence was
10:08:46 5 there. Excuse me. Courtney Quish was there, Jay
6 Sandvos was there.

7 Q. Now, that meeting you said lasted about
8 four hours; is that correct?

9 A. Right.

10:09:10 10 Q. When did it begin?

11 A. It began a little bit after ten o'clock.

12 Q. And continued until sometime?

13 A. Sort of midafternoon, right.

14 Q. Who is Jay Sandvos?

10:09:30 15 A. An attorney at Bromberg & Sunstein.

16 Q. Would you tell me, please -- withdrawn. Is
17 it correct that you were on that occasion given a
18 laptop containing the VoiceSignal source code that's
19 been produced in this case?

10:09:57 20 A. Yes, that's correct.

21 Q. Did you remove that laptop from Bromberg &
22 Sunstein's offices?

23 A. Yes, I did.

24 Q. Did you discuss with the people you

1 identified at Bromberg & Sunstein your observations
2 with respect to the portion of the March 24th
3 submission that you had read?

4 A. No, sir. The VST material was not the
10:10:29 5 subject of the main part of the meeting.

6 Q. Without telling me in detail, tell me what
7 the subject of the main part of the meeting was.

8 A. Today's meeting.

9 Q. But I take it there was some discussion
10:10:45 10 about the VoiceSignal source code and what it
11 showed, correct?

12 A. No, there really wasn't.

13 Q. How much time did you spend with Mr.
14 Lawrence going over the chart that you described?

10:11:06 15 A. Well, the chart was part of a discussion
16 that lasted, I'd say, 45 minutes, maybe in terms of
17 total elapsed time an hour. It was at the end of
18 the meeting after all the attorneys and other people
19 had left.

10:11:31 20 Q. Tell us what was said between you and Mr.
21 Lawrence in as much detail as you can recall during
22 that hour period.

23 A. I don't have any detailed recollection of
24 the actual dialogue. I can tell you that the effect

1 of it was to give me an overview of the organization
2 of material on the laptop. There was also a
3 discussion -- my main focus was on what my options
4 were for getting effective access to that material.

10:12:16 5 I was interested as to whether I could move the hard
6 drive to another machine or not.

7 There was a discussion about the boot-up
8 procedure, a discussion about the -- Mr. Lawrence
9 described a driver which the kernel thought was
10:12:42 10 present but really wasn't present and the need in
11 the past to interrupt the boot procedure and modify
12 it by hand. So it was discussion of that sort.

13 Q. Now, you did look at source code that
14 afternoon, correct?

10:12:57 15 A. I did not look at source code, from the
16 laptop.

17 Q. You did look at source code that afternoon,
18 did you not?

19 A. There were three fragments of source code
10:13:06 20 that were on the printout that Mr. Lawrence and I
21 looked at briefly, yes.

22 Q. What was the conversation -- withdrawn.
23 Will you tell us what you said -- I'll withdraw that
24 as well. Would you tell us what Mr. Lawrence said

1 to you and what you said to Mr. Lawrence regarding
2 the three pieces of source code that he showed you.

3 A. So let's see. The first piece of source
4 code was about five lines of code. It was what I
10:13:42 5 would call a cliché, that is, a commonly used sort
6 of sequence or organization of code, and it has to
7 do with the differences between the language C and
8 the language C++. And it basically said, if this is
9 being compiled by a C++ compiler, then it uses the
10:14:16 10 keyword class, and if it's not being compiled by a
11 C++ compiler, then it uses the keyword struct. And
12 Mr. Lawrence had found this interesting.

13 And I looked at it, and I said, "Well,
14 that's the typical sort of thing that you see when a
10:14:40 15 programmer is trying to write code that could be
16 used for -- compiled under both the C++ and a C
17 build environment."

18 Q. Tell us what else was discussed about the
19 source code that Mr. Lawrence had printed out and
10:14:54 20 shown to you.

21 MR. BROMBERG: If I may interject just for
22 a moment, I want to state on the record that to the
23 extent that there is a discussion in Dr. Goldhor's
24 answers about attorney-client communication or work

1 product, we preserve those privileges and do not
2 believe this questioning should constitute a waiver.

3 MR. FRANK: I think it's not
4 attorney-client privileged; it might be work
10:15:28 5 product. I think the inquiry is appropriate. It's
6 for someone else to decide at some other time
7 whether there's a waiver that results from this.
8 But your position is on the record.

9 MR. BROMBERG: Right. And I'm not
10:15:42 10 instructing him not to answer.

11 MR. FRANK: I understand.

12 Q. What else did Mr. Lawrence say to you about
13 the source code, the VST source code that he had
14 printed out and shown to you?

10:15:52 15 A. Well, in terms of what Mr. Lawrence said to
16 me, it was basically just kind of a question to the
17 effect of, Can you explain this to me? Or what do
18 you think about this?

19 The other two fragments were really each a
10:16:12 20 single line, and each of those lines was what you
21 might call the prefix to a class definition. One
22 was a class definition for a bigram model and the
23 other was a class definition for a unigram model.

24 Q. What did you say to Mr. Lawrence about that

1 printout, that portion of the VoiceSignal source
2 code that he had printed out?

3 A. Sure. I pointed out to Mr. Lawrence that
4 both the unigram model and the bigram model, as
10:16:59 5 shown in those two lines of code, were subclasses of
6 or inherited from a single-base subclass, language
7 model subclass, as opposed to having the bigram
8 model inherit from the unigram model. And I said
9 that that structure, that sort of data structure or
10:17:27 10 class structure, was, in that sense, different from
11 the structure that the ScanSoft code used.

12 Q. Did you discuss anything else about that
13 portion of the VoiceSignal source code that Mr.
14 Lawrence printed out for you?

10:17:45 15 A. No, sir.

16 Q. Did you identify anything in that source
17 code that you believed was unique or novel or
18 otherwise secret to ScanSoft?

19 A. There was no discussion of that sort one
10:18:02 20 way or the other, and I made no comments one way or
21 the other.

22 Q. Did you see anything in that source code
23 that you thought was secret or unique to ScanSoft?

24 A. I didn't look at anything.

1 Q. Did you see anything in the lines that you
2 did look at that you thought was secret or unique to
3 ScanSoft?

4 A. Not in those lines, no.

10:18:20 5 Q. Did you see anything -- did those lines,
6 taken together with other materials that you had
7 seen, suggest to you that some secret or unique
8 ScanSoft idea or code had been used by VoiceSignal?

9 A. While those lines, either by themselves or
10:18:40 10 taken in conjunction with other material, don't
11 suggest to me -- they really don't suggest anything
12 to me at all, but they by themselves are only tiny
13 fragments.

14 Q. What did you say to Mr. -- apart from what
10:19:03 15 you've already testified, did you say anything else
16 to Mr. Lawrence about the lines of VoiceSignal code
17 that you were shown?

18 A. No, sir.

19 Q. What else did you discuss with Mr. Lawrence
10:19:14 20 during the hour-long discussion of VoiceSignal
21 materials?

22 A. The rest of the discussion centered around
23 what my options were for getting access to that
24 code. As I've already indicated, whether it would

1 be possible to remove the hard drive and put it in
2 an external box, how to boot the machine, what the
3 password was. Mr. Lawrence recounted earlier
4 problems that he'd had with the mouse. There was a
10:19:46 5 discussion of the fact that the battery didn't last
6 very long.

7 Q. What did Mr. Lawrence tell you about the
8 use of the hard drive or what use you could make of
9 the hard drive?

10:20:01 10 A. He really didn't tell me anything.

11 Q. I take it you asked him whether you could
12 remove the hard drive and put it or install it in
13 another machine; is that correct?

14 A. I asked him whether there was a legal or
10:20:24 15 procedural restriction on that, and he said
16 something to the effect of, not that he knew of. I
17 reserved for myself the issue of whether there were
18 technical problems or limitations.

19 Q. Did you in fact remove the hard drive from
10:20:49 20 the laptop that you were provided?

21 A. Yes, I did.

22 Q. What did you do with the hard drive after
23 you removed it?

24 A. I turned it over and I looked at the

1 maker's label on it, and I took a careful look at
2 the connector on it. And having done that, I then
3 put it back.

4 Q. Apart from what you've testified, did you
10:21:14 5 do anything else with the hard drive as
6 distinguished from the laptop as a whole?

7 A. No, sir. After -- well, after I got back
8 to my offices, given the information that I had on
9 the make of the hard drive, I did a search of the
10:21:34 10 Web, and I located the installation manual and the
11 sort of technical specifications of the drive.

12 Q. Then what did you do?

13 A. So this was late in the afternoon after I
14 had gotten back to my office. I looked at that. I
10:21:54 15 read through the manual.

16 Q. The hard drive manual?

17 A. The hard drive manual that I had gotten off
18 the Web. And I then did a search on the Web looking
19 for boxes, external drive boxes that would make it
10:22:15 20 possible for me to put the hard drive in an external
21 case, connect it to my PC or some other PC via a USB
22 or FireWire interface, but then at the end of the
23 day take it and put it in a locked storage cabinet.

24 Q. Did you obtain any equipment of any type to

1 use with the hard drive that had been provided to
2 you?

3 A. No, sir, I didn't.

4 Q. Now, how much time did you then spend with
10:22:54 5 the laptop that had been provided to you by Bromberg
6 & Sunstein?

7 A. Well, I described, I received the laptop at
8 this meeting in the middle of the day. I left the
9 Bromberg offices midafternoon, got back to Bedford
10:23:18 10 probably around four o'clock in the afternoon. At
11 that point the laptop was on my desk. I left work
12 around six o'clock, and before I left, I put it in
13 this locked storage room.

14 Q. What did you do during the period of time
10:23:35 15 that you were working with the laptop?

16 A. Well, when I got back to my office, I
17 checked my e-mail, I answered some phone calls, I
18 did some other stuff like that. But it was during
19 this time that I was looking at the Internet to see
10:23:55 20 what the boxes were that were available. I also had
21 seen from the bootup process that a technology
22 called DriveLock seemed to be in use, so I did some
23 investigation of that to understand what that
24 technology was.

1 Q. What else did you do with the laptop?

2 A. I went through the boot process itself to
3 verify that the DriveLock technology was in fact
4 being used, and I looked at the system configuration
10:24:29 5 of the laptop to try to understand, again, sort of
6 what the options were in terms of what could be
7 connected up to it and so on.

8 Q. Have you told us now everything that you
9 did with that laptop from the time that you received
10:24:43 10 it -- from the time that it was first physically in
11 your presence at Bromberg & Sunstein to the time
12 when you physically returned it to Bromberg &
13 Sunstein?

14 A. Just to go into a little bit more detail of
10:24:55 15 the last point, the system configuration, I looked
16 at a special directory, a system directory called
17 /dev, which is the directory in which you can get
18 some indication of the known devices that are on the
19 machine. And I was particularly interested as to
10:25:23 20 whether the laptop knew what flash drives were, what
21 USB ThumbDrives were. I had one. Being an
22 engineer, I just hooked one up to see what would
23 happen. It didn't seem to -- the laptop didn't seem
24 to recognize the presence of the ThumbDrive.

1 I then did a little research on the Web,
2 found a short description of ways to make USB hard
3 drives known to Linux machines, which recommended
4 using a built-in system utility called modprobe. I
10:26:12 5 tried that, I didn't get any useful information,
6 concluded that I didn't have the right privileges.

7 And the final thing I did was to examine a
8 text file called /etc/modprobe.conf, which is a
9 system configuration file which was present and had
10:26:37 10 the right format but didn't contain any useful
11 information.

12 And just about at that point, as Mr.
13 Lawrence had warned me, the machine died; it was
14 pretty clear the battery had worn down. And I
10:26:54 15 looked at my watch and realized it was six o'clock
16 and said, "Okay, that's it for the day," and locked
17 it up and went home.

18 Q. Now, you say when you got back to the
19 office -- I understand from your declaration that
10:27:07 20 you attended a funeral on Friday morning, you got
21 back to your office --

22 A. Yes, sir.

23 Q. -- and there were telephone messages there.
24 From whom were those messages?

1 A. From Lisa Fleming and from Courtney Quish.

2 Q. Which was the first?

3 A. I believe the very first one was from
4 Courtney.

10:27:26 5 Q. What did that say?

6 A. That said, "Don't look at any of the
7 material again. Be prepared to wrap it up and bring
8 it back. Give us a call as soon as you get this
9 message."

10:27:39 10 Q. Then the next thing you heard, I assume, is
11 a message from Ms. Fleming?

12 A. Saying essentially the same thing, yes.

13 Q. When you returned those materials, did you
14 provide a cover letter or some other identification
10:28:00 15 of what it was that you were returning?

16 A. No, sir.

17 Q. You told us that Mr. Lawrence provided you
18 with a laptop on Thursday afternoon of last week.

19 A. Um-hum.

10:28:34 20 Q. To your understanding, was he retaining a
21 copy of a laptop or a laptop that had the same
22 materials on it?

23 A. No, sir. He was turning it over with a
24 great deal of contentment that this was now my baby

1 and not his.

2 Q. Did you in fact at any time remove any data
3 or copy any data from what you found on the laptop
4 to any other medium or device?

10:29:15 5 A. No, sir. None whatsoever.

6 MR. FRANK: I think that's all I have.
7 Thank you.

8 MR. BROMBERG: Nothing further from me.

9 MS. COLUMBIA: Let's take five minutes.

10:41:49 10 (Recess)

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1 (Present in the room are all counsel
2 together with Dr. Goldhor and Dr. Ney)

3 MR. FRANK: Professor Ney, let me explain
4 the context. You sent us an e-mail perhaps two
10:42:08 5 weeks ago saying that you would like to have experts
6 present at this session. The ScanSoft lawyers filed
7 a motion seeking permission, a motion with the Court
8 seeking permission to have the experts present and
9 requesting the Court's permission for ScanSoft's
10:42:38 10 expert to have access to Voice Signal's source code,
11 as distinguished from the prior procedure where
12 ScanSoft's experts would only have access to
13 ScanSoft's own trade secrets.

14 The Judge allowed that motion, I think on
10:43:01 15 Tuesday of last week.

16 DR. NEY: Can I interrupt for me to
17 understand. That means the expert now of the other
18 party -- I'm sorry.

19 MR. FRANK: Allow me to finish the story,
10:43:15 20 because we're in Chapter 1 of a several-chapter
21 novella.

22 Promptly after we received that order, we
23 informed -- my side, VoiceSignal, informed ScanSoft
24 that it intended to appear before the Court to ask

1 the Court to reconsider its position. The Judge had
2 allowed ScanSoft's motion without first having
3 received a response from the VoiceSignal side, and
4 we said that should hear the response from the
10:43:54 5 VoiceSignal side before you make a final decision.
6 And we then filed a motion, a formal paper in the
7 Court, asking that ScanSoft's expert not be
8 permitted to see Voice Signal's source code.

9 We had a hearing with the Judge on Friday
10:44:18 10 morning of last week. She said, in substance, that
11 it was not her intention that ScanSoft's expert
12 should see the VoiceSignal source code. It was her
13 intention, as had previously been stated, that
14 ScanSoft's expert would have access to ScanSoft's
10:44:44 15 trade secrets and would be free to discuss those
16 trade secrets with you at a technical level that was
17 higher than or more detailed than the lawyers are
18 capable of providing, but that it was not her
19 intention that he would receive access to the
10:45:06 20 VoiceSignal source code or that he could discuss
21 with you anything about what was in the VoiceSignal
22 source code.

23 Equivalently, the VoiceSignal expert could
24 discuss with you how the VoiceSignal source code

1 works, but he would not have access to ScanSoft's
2 trade secrets.

3 And the exchange that we just had out of
4 your presence was designed to find out how much
10:45:49 5 access ScanSoft's expert had to the VoiceSignal
6 source code between last Tuesday and last Friday.
7 And we made a record of what that is for the
8 consideration of the Court.

9 But I think we are agreed that the ground
10:46:10 10 rules, at least for today, are that you may discuss
11 with ScanSoft's expert, Dr. Goldhor, the particular
12 things that ScanSoft asserts are trade secrets and
13 may question him fully about that. But that he may
14 not talk to you about anything relating to the
10:46:38 15 VoiceSignal source code; he may neither make
16 comments about the source code or make suggestions
17 to you about that source code.

18 By the same token, Dr. Byrne, our expert,
19 who is in London but is available by telephone --
10:46:52 20 Cambridge, sorry.

21 MR. BROMBERG: Pretty close.

22 MR. FRANK: -- will be available to talk to
23 you about the VoiceSignal source code but not about
24 the ScanSoft trade secrets. Is that fair?

1 MR. BROMBERG: I think that's an accurate
2 statement. And if I could just make a brief --
3 well, strike that. So are you planning to have Dr.
4 Byrne on the phone during --

10:47:14 5 MR. FRANK: Dr. Byrne is in his office in
6 Cambridge.

7 I should tell you one other thing, and that
8 is, you may recall from our last session that there
9 was an objection by ScanSoft as to whether Dr. Byrne
10:47:29 10 could be the person who was the VoiceSignal expert.
11 The Judge said that he could be, he could act as the
12 VoiceSignal expert. By the time that got sorted
13 out, which was last Friday, it just was not
14 physically possible for Dr. Byrne to come today
10:47:47 15 because of his other academic commitments at
16 Cambridge. But he is available in his office, and
17 it's our expectation that to the extent Dr. Ney
18 wants it, he's available on the phone and will
19 answer any questions that you have to the extent
10:48:04 20 that he can.

21 MR. BROMBERG: I guess that in view of the
22 Judge's ruling, we have no objection to Dr. Byrne
23 participating by telephone or being here, for that
24 matter. I understand he has to participate by

1 telephone under the circumstances, and that's fine
2 with us.

3 I just wanted to say, Professor Ney, that
4 Mr. Frank has given us an accurate description of
10:48:32 5 what transpired. I think that Dr. Goldhor, our
6 expert, did not in fact look at the VST source code
7 on the computer. He has acknowledged seeing I think
8 seven lines that were printed out. So that's the
9 extent of what he looked at. I don't know what
10:48:56 10 VST's position will be about that going forward;
11 that remains to be seen.

12 However, what Judge Saris did say on
13 Friday -- a couple of things of interest. One of
14 them is she's reserved May 12th at 11 a.m. to speak
10:49:16 15 to you by telephone for whatever purpose you wish.

16 MR. FRANK: 11 a.m. our time.

17 MR. BROMBERG: Yes, 11 a.m. Eastern
18 Daylight Time. I guess that would be five o'clock
19 in Aachen.

10:49:30 20 DR. NEY: Yes, it would.

21 MR. BROMBERG: Okay. And she did say that
22 her ruling on May 2nd that Dr. Goldhor gets to look
23 at the VST code, she reversed herself on that. She
24 said, "That's not what I intended." She intended